(b) Was the neighbour in breach of by-law 46 and if so what damage has been caused to the plaintiff by such breach?

(c) Was the neighbour guilty of the tort of negligence (and/or, if the plaint is amended, trespass) towards the plaintiff and if so what damage has been caused to the plaintiff?

The law propounded may be summarised very briefly as follows:—

(1) The council is liable to the plaintiff if in breach of the outright prohibition of section 145 it passed the neighbour's building plan when it was not in conformity with the approved plan and such breach results in damage to the plaintiff.

(2) The council is not liable to the plaintiff for breach of the by-laws, it not being alleged that the council has caused damage by negligence or trespass.

(3) The neighbour is liable to the plaintiff for breach of by-law 46 if, and only if, the breach results in actual damage to the plaintiff and in any event, irrespective of whether the neighbour was in such breach or not, the neighbour is liable to the plaintiff for any damage caused by negligence and/or trespass.

Azmi L.P and **MacIntyre F.J.** concurred.

Appeal allowed.

Solicitors: *S. Seenivasagam & Sons; Williams & Co.*

THE ATTORNEY-GENERAL, SINGAPORE v. HO TEE MING

[F.C. (Wee Chong Jin C.J., Chua & Winslow JJ.) January 31, 1969]

[Singapore — Federal Court Civil Appeal No. Y.56 of 1967]

Negligence — Safe system of work — Prison authorities requiring inexperienced prisoner to place asbestos roofings — Contributory negligence.

Damages — Hands — Rheumatoid arthritis.

This was an appeal by the Attorney-General against the decision of the High Court awarding damages to the respondent for injuries sustained by him as a result of the negligence of the prison authorities. The respondent was a prisoner at the material time. He was instructed by the instructor of metal works at the prison to climb on top of a framework of a garage which was in the process of being constructed, and place some heavy asbestos sheets on its metallic rafters to serve as a sort of roof. He was inexperienced in this type of work. While he was carrying out the instructions, the respondent happened to step on the asbestos sheet which broke and caused him to fall to the ground from a height of about 8 to 9 feet. He suffered injuries to his hands and face and rheumatoid arthritis set in on both his hands as a result of the accident. The High Court awarded him the sum of $14,000 as general damages and $600 as special damages on the grounds that the prison authorities were negligent in failing to provide a sufficiently reasonable and safe system of work, and that there was no contributory negligence on the part of the respondent.

The question for decision in this appeal was whether the trial judge was right in finding that the prison authorities were negligent in failing to provide a sufficiently reasonable and safe system of work for the work which they required the plaintiff to do on the metallic framework of the roof and that there was no contributory negligence on the part of the plaintiff and finally whether the quantum of damages awarded was excessive.

Held: (1) in the circumstances of the case, the prison authorities had failed to provide the respondent with a sufficiently reasonable and safe system of work for the work which they required him to do;

(2) the respondent had failed to take reasonable care for his own safety and had thereby contributed to his own injury; his share in the responsibility for the accident was one half;

(3) the award of $14,000 as general damages for loss of earnings and pain and suffering and $600 as special damages for loss of earnings before the trial was confirmed.

Cases referred to:—

(1) *Paris* v. *Stepney Borough Council* [1951] 1 All E.R. 49.

(2) *Morris* v. *West Hartlepool Steam Navigation Co. Ltd.* [1956] 1 All E.R. 385.

(3) *Eng Lye Hup Co. Ltd.* v. *Chua Sai Choo & Anor.* [1968] 1 M.L.J. 231.

FEDERAL COURT.

Lee Kim Siang (State Counsel) for the appellant.

Denis Murphy for the respondent.

Cur. Adv. Vult.

Winslow J. (delivering the judgment of the court): This is an appeal by the Attorney-General, Singapore against the decision of Kulasekaram J. who held that the plaintiff/respondent had proved negligence on the part of the prison authorities at the Medium Security Prison, Changi on 15th September, 1965 and awarded him damages for the injuries sustained by him as a consequence of such negligence. The appeal is directed both against the question of liability as well as the quantum of damages awarded in the sum of $14,000 for general damages and $600 for special damages.

The plaintiff was a prisoner nearing the end of his term of imprisonment at the material time and had been instructed by the instructor of metal works at that prison to place some asbestos sheets on the metallic rafters of the framework of a garage which said sheets were intended to serve as the roof of that garage.

In order to appreciate what follows, without constant reference to a model which was produced, we propose to give a brief description of this garage. This metallic framework of the garage, which had been erected previously so as to adjoin the main Prison Industries Office was immediately to the right of that office as one looks at it from the front. The proposed roof had a slight downward slope from the front to the rear and the side nearest to the office ran parallel to the side of that office and, for convenience, we shall call it the third side of the garage. Needless to say, there were no walls on any of the four sides of the proposed garage and the proposed roof was supported by metallic poles. The last side, which we shall call the fourth side, was that side which ran parallel to the third side at the extreme right hand end of the structure as one looks at it from the front.

It is unfortunate perhaps that, although a model was produced without any clear explanation of the exact scale adopted in preparing it, there is little evidence as to precise heights, lengths or widths, and we are accordingly unable in this judgment to give precise measurements. It is common ground, however, that the metallic framework of the roof ranged from about 8 to 9 feet in height.

It is also perhaps unfortunate that in the presentation of the case by both parties no attempt was made to produce, as exhibits, a sample of the asbestos sheets the plaintiff was instructed to place on the framework of the roof and either of the two planks said to have been placed on the metallic framework of the roof to assist the plaintiff in his work on the roof. Neither party adduced evidence of the exact measurements of the asbestos sheets said to have been used or of the planks. All we know from the evidence is that the sheets were heavy and were 7 feet long. It would appear that some pieces of paper were produced before the trial judge to represent the asbestos sheets to enable him to follow the evidence but we do not have the benefit of these pieces of paper nor do we know exactly where they were placed on the model by the witnesses during the trial and we have to rely heavily on what the trial judge has himself said in his grounds of decision as to where and how exactly they were placed. There is, however, just sufficient material, despite these inadequacies in the presentation of the case, for us to reach our own conclusions as to where responsibility should lie for the fall that morning of the plaintiff from the roof on to the ground outside as a result of which his injuries were sustained.

What we have to decide in this appeal is whether the trial judge was right in finding that the prison authorities were negligent in failing to provide a sufficiently reasonable and safe system of work for the work which they required the plaintiff to do on the metallic framework of the roof and that there was no contributory negligence on the part of the plaintiff and finally whether the quantum of damages awarded was excessive.

We now turn to the facts bearing in mind that, on the question of liability, there were two conflicting versions of the accident.

The plaintiff's version was to the effect that he was ordered by one Leong Fook Seng, the instructor of metal works at the prison, to climb up a ladder to the top of the framework and squat on one of two planks which had been placed on the framework by him and a fellow prisoner on their own volition the previous day. This plank, according to him, was near the fourth side and parallel to it. He squatted on this plank at about the middle of that side and was facing the fourth side with his back to the office. A sheet of asbestos was then handed up by Leong and another prisoner from the ground below which he and P.W.3, another fellow prisoner who was also squatting on the plank beside him, placed on the top of the framework in front of them near the edge of the fourth side. The length of the sheet was parallel to the plank on which they were squatting. They were then requested by Leong to push the sheet forward which they did. P.W.3 then moved away to bring the other plank. Leong then directed the plaintiff to push the sheet further forward which he proceeded to do. Whilst he was pushing the sheet further forward, the sheet broke into two halves and that half which was projecting beyond the fourth side over the grass below fell down leaving the other half still on the framework. When this happened he lost his balance and fell over outside the fourth side on to the broken half of the asbestos sheet which was already on the ground outside. He further said that this sheet was the first sheet placed on the roof and that this was his first experience of working on a framework such as this one and that he had never volunteered to do this job but had been ordered to do so by Leong who had never previously ascertained whether he had had any experience of this type of work.

As against this version we have the version of the principal witness for the defence, that is, the instructor, Leong. That morning he had instructed the plaintiff to climb to the top of the framework and place two asbestos sheets, one on each of the two rear corners of the roof. The first sheet was placed on the corner between the third side and the rear. The longer edge of the sheet was along the third side while one of the shorter edges of the sheet was along the

rear side edge of the roof. The second sheet was similarly placed on the other corner between the rear and the fourth side. Just before the accident occurred, the plaintiff was squatting on a plank which was placed lengthwise alongside the last rafter which ran parallel to the rear of the roof. According to Leong the plaintiff was squatting on this plank and was adjusting the second sheet into position so as to cause it to be in proper alignment with the first sheet. After this had been done Leong instructed the plaintiff to come down via the ladder which was then leaning against the framework on the rear side while Leong himself was standing on the ground below near it. The plaintiff then stood up on the plank and looked away from the building and while he was doing this, he happened to step with his right foot on to the asbestos sheet which broke and caused the plaintiff to fall down on the grass to the rear of the garage. But he did not know the manner in which the plaintiff fell.

It will be seen from these two versions that, whereas the plaintiff said that he fell off over the fourth side as a result of pushing the sheet which broke and caused him to lose his balance whilst he was still squatting on a plank running parallel to the fourth side, the defence version was that the plaintiff was squatting on a plank running parallel to the rear which had been placed alongside that rafter nearest the rear and that when he was ordered to come down, he stood up on that plank and looked away from the building and that he happened to place his right foot on the asbestos sheet which broke and caused him to fall down on to the grass at the rear.

The trial judge quite rightly rejected the plaintiff's version as to where he fell and what he had been previously doing just before he fell, as it was indeed a most incredible story, and preferred the defence version of the accident up to a point, namely, that the plaintiff fell off towards the rear and near its corner with the fourth side and that he had previously been sitting or squatting on a plank parallel to the rear. The trial judge did not, however, accept Leong's evidence thereafter when he said that he saw the plaintiff stand up on the plank and look away from the building and that while he was looking away, he happened to step with his right foot on the sheet which broke and caused him to fall down. This is what the trial judge said —

> "Then Leong goes on to say that the plaintiff then stood up on the plank and looked away from the building and while he was looking away he happened to step with his right foot on the asbestos sheet which broke and he fell down. He went on to say that he did not know the manner the plaintiff fell down. One wonders why Leong who was an eye witness is unable to say the manner the plaintiff fell down. Could it be that Leong is not quite clear about the details of the last few critical moments before the plaintiff's fall? On Leong's evidence it would appear very probable that plaintiff as he was raising himself up, or as he raised himself up on the plank, with a view to coming down, lost his balance. This apparent stepping on the asbestos sheet was very probably an involuntary act on the part of the plaintiff when he tried to regain his balance having first of all lost it. To my mind this stepping on the asbestos sheet by the plaintiff was not a deliberate or careless act on the part of the plaintiff. There is no reason why plaintiff would want to step on this asbestos sheet.
>
> I find that the plaintiff while raising himself up from the squatting position on the plank lost his balance and thereby stepped on the edge of the asbestos sheet and came to grief. The main cause of the accident was plaintiff's losing his balance."

It should be noted that Leong's evidence is to the effect merely that as the plaintiff stood up and looked away from the building, he happened to step on the asbestos sheet which broke. It does not seem to us that Leong was attempting to give the impression that the plaintiff deliberately stepped on that sheet. His evidence on this point is equally consistent with the plaintiff's losing his balance. It is difficult to understand the trial judge's conclusion that Leong's evidence on this point amounted to an allegation of a deliberate act or of sheer careless conduct on the plaintiff's part. It should be remembered that in Leong's version which was accepted up to that stage, the plaintiff, after having climbed up the ladder, had managed to get on to the roof somehow and to place the first sheet against the third side towards the rear and then move himself into position to the other rear corner with the fourth side. During all these manoeuvres there was no suggestion by anyone that he ever stood up on the plank or conducted himself otherwise than in a careful manner. Presumably, he was comporting himself with sufficient care for his own safety by easing himself along in a squatting or sitting position on that plank from the third side to the fourth side. One would have thought that when he was asked to come down, he could have done so without mishap in the same manner as he tackled the work he had previously done on the roof. What caused him to lose his balance was his standing up or raising himself up to such an extent as to cause him to lose his balance.

We agree, however, with the trial judge that working on a framework of a roof such as this one is different from working on tops of buses which the plaintiff had done before. As the trial judge has said "it entails more risks and requires more experience at balancing oneself." He rejected Leong's evidence that he had ascertained from the plaintiff about his experience and that the plaintiff told him that he could work on the top without any support. He also rejected Leong's statement that he had

warned the plaintiff before he went on to the roof not to step on the asbestos sheet. He accordingly found that the system of work was reasonable and safe provided a worker employed on the roof had had the necessary experience. In short, he found that the system of work employed in the present case of using a ladder to go up to a roof and then to use planks already placed on the framework to serve as a sort of a platform to work from to be unsafe in all the circumstances in the case of an inexperienced workman such as the plaintiff.

On the facts found by the trial judge, it is difficult to avoid the conclusion that the prison authorities, in sending up an inexperienced person such as the plaintiff on to the metallic framework of the roof, failed to take adequate precautions against the kind of over-balancing that did occur. Such precautions were those which a reasonable and prudent man would have thought so obvious that it was folly to omit them or that it was unreasonable or imprudent to omit them — see the test laid down by Lord Normand in *Paris* v. *Stepney Borough Council* [1] or this test as explained in the later case of *Morris* v. *West Hartlepool Steam Navigation Co. Ltd.*[2] which this court approved in *Eng Lye Hup Co. Ltd.* v. *Chua Sai Choo & Anor.*[3]

In our opinion it was insufficient merely to provide a ladder and a plank or two for a workman inexperienced in these matters and to require him to lift up a heavy asbestos sheet whilst sitting or squatting on a plank over the gaping void of the metallic framework of a roof and then to require him to place or align that sheet over the rafters in the desired position especially when the instructor himself had had no experience whatever of working on top of rafters and framework such as this.

The next question we have to decide is whether there was any contributory negligence on the part of the plaintiff. As we have already said earlier the plaintiff had already executed certain works on the roof prior to his fall, such as placing two asbestos sheets along the third and fourth sides respectively towards the rear corner of the roof. He seems to have exercised sufficient care for his own safety in moving along the plank from one side to the other without mishap. What caused him to lose his balance was his act of raising himself up on the plank in order to reach the ladder. The trial judge found no contributory negligence on his part because —

> "It cannot be said that this accident was in any way caused by the plaintiff not taking reasonable care over his own safety. His losing his balance on the day in question cannot in any way be attributed to his not taking reasonable care over himself. I take the view that it was solely due to his inexperience at working at heights from frameworks such as this one."

With respect we do not entirely agree. We appreciate the risks to which the plaintiff was exposed but he appears, despite his inexperience, to have successfully carried out his earlier duties. Our decision might have been otherwise if he had fallen off the metallic framework of the roof at a much earlier stage, for example if, soon after climbing up the ladder to the top and then in negotiating the rafters with a view to getting on to the plank, he had fallen down. We accept the trial judge's finding that he did not deliberately step on the asbestos sheet with his right foot. This is exactly what Leong himself said about the plaintiff's standing up and happening to step on the asbestos sheet save that the trial judge does not quite accept the position that the plaintiff was actually standing up before he fell. He held that the accident occurred as he was raising himself up or as he raised himself up on the plank with a view to coming down. This plank ran parallel to the rear edge of the roof and had been placed lengthwise alongside the rafter nearest the rear. The ladder was leaning up against the rear edge of the roof with the sheet to his right as he faced the rear of the building. One would have thought that if he had exercised the same care as he did on climbing on to the roof and on to the plank, he should have been able to negotiate the return journey safely. We think, however, once the job was done, in raising himself up from his squatting position, he failed to take reasonable care for his own safety and thereby contributed to his own injury. We would accordingly assess his share in the responsibility for the accident at one-half and the damages recoverable will therefore be reduced accordingly.

We now turn to the question of the quantum of damages awarded. The plaintiff suffered injuries to his face and hands. Examination revealed abrasions involving the forehead, nose and both upper limbs and he suffered pain on the passive movements of the shoulders, elbows, wrists and fingers. Five days after the accident his fingers had become stiff, painful and swollen and symptoms of rheumatoid arthritis were noticed affecting both hands. On examination a year later, this diagnosis of rheumatoid arthritis was confirmed by Dr. Horne. In 1967 it seemed probable that this disease had extended to his left leg. He was a blacksmith and the evidence is that it was not likely that he would ever be able to go back to that occupation. The trial judge accepted the evidence of Dr. Horne that there was a relationship between the accident and the onset of rheumatoid arthritis, despite the contrary view expressed on behalf of the defence by Dr. Gwee which suggested that the onset of this disease was probably rather the emotional upset of the

plaintiff arising from his being a prisoner. As against this, the plaintiff had been a prisoner since 1961 and the disease only set in about September 1965 soon after the accident. In our opinion there was ample material to justify the trial judge's finding on this issue. The trial judge, however, found no positive evidence that the disease had spread to the lower limbs and accordingly proceeded to assess damages on that basis. Although the plaintiff said he had worked as a blacksmith, he had prior to his imprisonment been working as a bar waiter. He was about 39 years of age when damages were assessed. It was then clear that he would be unable to do heavy manual work but the trial judge found that he could, bearing in mind that he was an ex-prisoner, probably be able to obtain some form of employment of a lighter nature for a period of 10 working years and not more. We cannot disagree with this assessment of his working potential or with the finding that his earning capacity would have been reduced by about $100 per month from his previous earnings of $200 per month as a waiter. We would therefore confirm the award of $14,000 as general damages being as to $9,000 in respect of loss of earnings and $5,000 for pain and suffering and loss of amenities of life. We would also confirm the award of $600 as special damages for loss of earnings before the trial.

The appeal partly succeeds, as indicated earlier, and we would award the appellant three-quarters of his taxed costs of this appeal.

Appeal partly allowed.

Solicitors: *Williams & Co.*

PUBLIC PROSECUTOR v. WINSTON CHUNG YIN CHEN

[A.Cr.J. (Ibrahim J.) February 23, 1969]
[Malacca — Criminal Appeal No. 53 of 1967]

Advocates and Solicitors — Suing out process — Writ of summons signed in the name of firm of solicitors by firm employee not being a practitioner — Whether acting as an advocate and solicitor — Advocates and Solicitors Ordinance, 1947, s. 57(1)(a).

This was an appeal against the acquittal and discharge of the respondent on charges under section 57 (1) (a) of the Advocates and Solicitors Ordinance, 1947, for acting as an advocate and solicitor by signing the name of his employers a firm of solicitors on two generally endorsed writs in two civil suits filed in the High Court.

The respondent was acquitted by the president of the Sessions Court on the grounds that it was the firm of solicitors which had authorised the issue of the two writs and it was the said firm which therefore sued out the writs. Further he held that it was impossible to say that the defendant was acting as a solicitor when he signed the two writs. On appeal,

Held, dismissing the appeal: (1) it was the firm of solicitors which were the respondent's employers that sued out the writs. Tht respondent had therefore not committed the two offences of which he was charged;

(2) the evidence produced by the prosecution did not show that the respondent was actually acting as an advocate and solicitor on his own behalf. When the respondent signed the name of the firm on the two writs he was not acting on his own behalf but on behalf of that firm. The respondent therefore had not acted as an advocate and solicitor under section 57(1)(a) of the Advocates and Solicitors Ordinance, 1947.

Cases referred to:—

(1) *Guthrie* v. *Fisk* 3 B.&.C. 183; 107 E.R. 700.

(2) *Dockings* v. *Vickery* (1882), 46 L.T.R. (N.S.) 139.

(3) *Law Society of the U.K.* v. *Waterlow Bros. etc.* (1883), 8 App. Cas. 407.

(4) *Abercombie* v. *Jordan* (1881), 8 Q.B.D. 187.

MAGISTRATE'S CRIMINAL APPEAL.

Ajaib Singh (Deputy Public Prosecutor) for the appellant.

Yong Pung-How for the respondent.

Ibrahim J.: The respondent was tried by the learned president on 3 charges under section 57(1)(a) of the Advocates and Solicitors Ordinance, 1947 which as finally amended read as follows:—

1. That you, on or about the 4th of November, 1965, in the State of Malacca, not being a practitioner, acting as an advocate and solicitor sued out a process, to wit, a Writ of Summons in Civil Suit No. 183/65 in the High Court, Seremban, in the name of Murphy & Dunbar and thereby committed an offence under section 57(1)(a) and punishable under section 57(1) of the Advocates and Solicitors Ordinance, 1947.

2. That you on or about the 24th day of February, 1966, in the State of Malacca, not being a practitioner, acting as an advocate and solicitor sued out a process, to wit, a Writ of Summons in Civil Suit No 16/66 in the High Court, Seremban, in the name of Murphy & Dunbar and thereby committed an offence under section 57(1)(a) and punishable under section 57(1) of the Advocates and Solicitors Ordinance, 1947.

3. That you on or about the 22nd day of June, 1965, in the State of Malacca, not being a practitioner, acting as an advocate and solicitor sued out a process, to wit, a Writ of Summons in Civil Suit No. 94/65 in the High Court, Malacca, in the name of Murphy & Dunbar and thereby committed an offence under section 57(1)(a) and punishable under section 57(1) of the Advocates and Solicitors Ordinance, 1947.

He was acquitted and discharged on all the three charges at the close of the case for the prosecution and this is an appeal by the public prosecutor against that acquittal and discharge. At the outset of the hearing of this appeal the appellant abandoned the appeal in respect of the third charge as the evidence disclosed that it was not the respondent but a partner of Messrs. Murphy & Dunbar who had signed the writ of